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SUPPLEMENTARY ANALYSIS 2-B

FACTORS ASSOCIATED WITH STATE RATES OF  
OUT-OF-SCHOOL SUSPENSION AND EXPULSION

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## **Factors Associated with State Rates of Out-of-School Suspension and Expulsion**

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Data from the U.S. Department of Education Office for Civil Rights showing that Indiana ranked first in the nation in expulsion and ninth in the nation in expulsions in the most recent available statistics cannot help but raise questions concerning why this is so. At a preliminary presentation of that data before the Indiana State Legislature in the Spring, 2004 session, some respondents suggested that Indiana's relatively high rate of expulsion may be a function of how expulsion is defined. The argument was made that, since Indiana defines an expulsion as any school removal over 10 days, by definition the state would count more school removals as expulsions than other states that may define a higher number of days (e.g., 15 or 20 days) as the dividing line between what is counted as a suspension or an expulsion. Thus Indiana's apparently high rate of expulsion, the argument continued, was simply a function of how the state counts expulsions relative to other states.

This is indeed one of many possible hypotheses concerning factors in state statute that might be associated with higher rates of school expulsion. One might, for example, argue that other characteristics of state definition—the presence of zero tolerance policies (not present in Indiana's definition), or relatively broader definitions of infractions subject to expulsion (which Indiana does have)—might be the most important factors in determining a state's rate of expulsion. Only an empirical study of the relationship of such characteristics and state rates of expulsion could adequately test such hypotheses.

In order a range of possible reasons for Indiana's rate of expulsion, we examined and coded state definitions of expulsion in all fifty states. To find all statutory language related to out-of-school suspension or school expulsion, we examined the Education statutes or codes for all 50 states. We examined all statutes or codes related to out-of-school suspension and expulsion for each state and were able to comprise five primary categories: definition/length, types of infractions, alternatives to suspension or expulsion, due process, and corporal punishment. Differences among states in these characteristics were then examined with respect to state rates of out-of-school suspension or expulsion in an attempt to determine which if any of those characteristics predict higher rates of school exclusion.

### ***Method***

*Accessing state statutes.* The search engine *Google* was used to find state codes pertaining to suspension and expulsion. Search words included "state government website" and "Department of Education" (e.g. Indiana state government website and Indiana Department of Education). Individual state websites were then searched for links to statutes, codes, or constitutions. Much of the information was easily accessible; occasionally it was necessary to contact individuals from the department of education or the webmaster by email or phone in order to locate the appropriate link or to fax information to us.<sup>1</sup>

Once appropriate state websites were located, search engines associated with each website were used to find all statutory language relevant to school discipline. Keywords used included the terms: *suspension, expulsion, discipline, code of conduct, pupils, students, corporal punishment, due process, alternative education, firearms, and zero tolerance*. In several instances the search engine required a specific statute or code number to be used in order to locate the proper section of the document. In these cases we contacted individuals from that state's Department of Education to supply us with the correct statute or code numbers in order to locate the information.

In examining the statutory language of the state definitions, commonalities and themes emerged. These commonalities were used to develop a code book to organize the information (see Appendix A for codebook). Five major categories of codes emerged. (Note that although for ease of usage suspension and expulsion are described together below, there was always separate coding for out-of-school suspension and expulsion in each category).

- *Definition/length*: Does the state define a minimum period of time for out-of-school suspension and expulsion? Is there a maximum length of time specified that a student could be suspended or expelled?
- *Types and definitions of infractions*: For what types of infraction does state statute specify that a student can be suspended or expelled? Are these infractions defined in state code?
- *Alternatives to suspension or expulsion*: Does the state code state that certain alternative procedures (e.g. conflict resolution) can or should be used prior to the application of out-of-school suspension or expulsion? Are these procedures specifically identified or defined? Does the state allow or require that students who are suspended or expelled be served in an alternative setting during the length of their suspension/expulsion?
- *Due process*: What due process procedures are mandated by state code when a student is suspended or expelled?
- *Zero tolerance and corporal punishment*: Does the state explicitly use the term zero tolerance in its disciplinary regulations? For what infractions if any may a student be expelled for one year? Does the state explicitly allow or forbid the use of corporal punishment as a disciplinary tool in school settings?

The final codebook contained 26 items that were used to organize the information from the state statutes. Two graduate students acted as coders. Coding for nine randomly selected states was checked for reliability. The inter-rater reliability was good, ranging from 83% to 96%, with an overall rate of agreement of 91.44%.

## ***Results***

Results are described below for each of the five categories of state definition components. Descriptive results are followed by analyses of the extent to which variables in that category were associated with higher state rates of suspension and expulsion. One way analysis of variance (ANOVA), with Scheffe follow-up tests, were used to examine whether states exhibiting a certain characteristic in their definition (e.g., allow permanent expulsions) have a

significantly different rate of expulsion or suspension than those without that characteristic (e.g., do not use permanent expulsions).

*Length of suspension and expulsion.* When does a suspension become an expulsion? Indiana defines the dividing line as 10 days, leading some to suggest that this lower limit leads to the inclusion of greater numbers of suspensions as expulsions. Yet the data suggests that this statutory definition is hardly unique. Table 1 lists the minimum length listed in state statute for an expulsion, that is, the line by which a state divides an out-of-school suspension from an expulsion. Only 15 out of 50 states provide a statutory definition of the lower limit of length of an expulsion. Of those 15, 12 define the dividing line between suspension and expulsion as 10 days. Thus, Indiana's defined lower limit on length of expulsion is in no way unique, but appears to be the most common definition among those states that define a lower boundary for expulsion.

Given the relative lack of variability in state definitions of length of suspension and expulsion, it is not surprising that none of the variables representing either minimum or maximum length of out-of-school suspension or expulsion were significantly related to state rates of suspension or expulsion.

*Types and definitions of infractions.* State statutes allowed or mandated expulsion for a variety of infractions ranging from firearms and weapons, to criminal violations, to property damage, to disorderly conduct, to indolence. Table 2 presents a summary of the types of infractions listed in state statutes as leading to suspension or expulsion. A majority of states simply presented the names of the infractions listed in Table 2, without defining those terms for expulsion ( $n=29$ ) and out-of-school suspension ( $n=31$ ), presumably leaving the definition of infractions to local school districts.

Only two types of infractions were significantly related to state rates of out-of-school suspension or expulsion. States that allow expulsion for infractions occurring off-campus have significantly higher rates of school expulsion than those that do not grant schools such permission,  $F(1, 48) = 5.94, p = .019$ . Indiana is among those states ( $n = 15$ ) that allow expulsion for off-campus infractions. Second, in states in which *criminal violations* are explicitly identified as a reason for which students can be expelled from school, there is a significantly higher state rate of school expulsion,  $F(1, 48) = 13.75, p = .001$ . Indiana is among those states ( $n = 14$ ) that explicitly define criminal violations as one of the infractions for which a student may be expelled. There was no significant relationship between suspension for criminal violations and state rates of out-of-school suspension.

*Alternatives to suspension/expulsion.* In some state statutes, alternatives to suspension were mandated prior to the use of out-of-school suspension ( $n = 9$ ) or expulsion ( $n = 13$ ). In others, state statute did not mandate, but allowed local districts to implement alternative procedures or interventions for expulsion ( $n = 27$ ) or out-of-school suspension ( $n=17$ ). Table 3 is a summary of definitions of the alternative procedures mandated or allowed in state statutes.

None of the components of state definitions related to alternatives to out-of-school suspension or expulsion were significantly related to overall state rates of out-of-school suspension or expulsion.

*Due process requirements.* We coded whether states explicitly defined due process rights with respect to suspension and expulsion and the number and type of such rights. A listing of those rights is presented in Table 4. There was no relationship between either the number or type of due process rights offered with respect to suspension and expulsion and the state rates of out-of-school suspension and expulsion.

*Corporal punishment and zero tolerance.* Although a vast majority of states included specific requirements regarding mandatory calendar-year expulsions for firearms as required by the Gun Free Schools Act, few states actually mentioned zero tolerance in their state statute ( $n = 4$ ). The majority of states did contain provisions specified by the Gun-Free Schools Act, however, mandating a one year calendar expulsion for possession of a firearm ( $n = 41$ ) or other weapons ( $n = 24$ ). The presence or absence of the term zero tolerance in state statute was not significantly related to state rates of suspension or expulsion. Indiana does not explicitly mention the term *zero tolerance* in its state statute, but does mandate a calendar year expulsion for firearms.

We also coded whether state statute gives permission to local school districts to use corporal punishment as part of school disciplinary procedures. Three clear groupings emerged among state definitions with respect to the presence or absence of corporal punishment. Some states ( $n = 11$ ) expressly give schools permission to use corporal punishment as part of their disciplinary procedures. Other states ( $n = 15$ ) expressly forbid the use of corporal punishment in schools. Finally, some states ( $n = 24$ ) make no explicit mention of corporal punishment in their educational statute. Tested with one way ANOVA's, states expressly permitting the use of corporal punishment in schools had higher rates of out-of-school suspension than states forbidding or making no mention of corporal punishment,  $F(2,47) = 3.78, p = .05$ . There was no significant relationship between state language regarding corporal punishment and state rates of expulsion.

Indiana's status with respect to corporal punishment is somewhat more complicated than many of the other state statutes that were examined. Since there is no explicit mention of corporal punishment in Indiana's educational statutes governing school discipline, Indiana was counted among those states that do not explicitly mention corporal punishment in statute. It is important to note, however, that Indiana does allow schools the option of corporal punishment. Corporal punishment is not explicitly mentioned in the educational statutes in Indiana Code dealing with school discipline. Rather, school corporation personnel are given the right to "take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective educational system" (IC 20-8.1-5.1-3). Specific permission to use corporal punishment is found in the juvenile justice section of the code (IC 31-34-1-15).

## Conclusions

Indiana's ranking as the state with the highest per capita rate of school expulsions in the latest available (e.g. 2000) data from the U.S. Department of Education Office for Civil Rights naturally leads to questions concerning what factors cause a state to have a high rate of suspension and expulsion. We comprehensively examined state statutes governing school discipline for all 50 states, describing the patterns among those states, and the relationships between definitional components and statewide rates of out-of-school suspension and expulsion.

Contrary to assertions made before the legislature in its Spring, 2004 session, there was no relationship between minimum or maximum lengths of out-of-school suspension or expulsion and states' per capita rates of out-of-school suspension and expulsion. Only a minority of states ( $n = 15$ ) define a minimum length of expulsion. Of those that do, Indiana is one of the vast majority ( $n = 12$ ) that define 10 days as the limit differentiating out-of-school suspension or expulsion. It is likely that this number is drawn from court precedents (e.g. *Goss v. Lopez*, 1975) or federal statutes (e.g. *Individuals with Disabilities Education Act*, 1997) that have sought to determine when a long-term suspension becomes a school expulsion. Thus, these results provide no support for the hypothesis that Indiana's high relative rate of school expulsion is dependent upon what is counted in terms of days of expulsion.

There were however, three characteristics of state statutes relevant to school discipline that were significantly associated with states' rates of out-of-school suspension or expulsion. First, states that list criminal violations as among those infractions for which students can be expelled have higher rates of expulsion. Second, states that allow expulsion for infractions occurring off campus have higher rates of school expulsion. Finally, states that explicitly allow schools to use corporal punishment have higher rates of out-of-school suspension (but not expulsion). Indiana is among those states that allow expulsion for criminal violations and offenses occurring off-campus. It is not technically among those states that explicitly give schools permission for corporal punishment, although corporal punishment is indirectly allowed in Indiana state statute.

In recent years, attention has begun to be focused on a phenomenon termed the *school-to-prison pipeline* or *prison track*. Sometimes used in conjunction with zero tolerance policies, some states and school districts are increasingly involving the courts and juvenile justice system in matters of school discipline (Wald & Losen, 2003). Researchers and policymakers have expressed two primary concerns about this trend. First, it appears that an increasing proportion of students have become involved with the juvenile justice system over behaviors that were once considered minor schoolyard misbehaviors. In one incident described in Ohio, a student was sent to juvenile detention after having grabbed a CD player from another student (Casella, 2003). Second, as with school discipline in general, the data show that minority students represent a disproportionate number of those who are subjected to the intervention of law enforcement in schools (Osher et al., 2003). This study provides one more demonstration that states that expand school disciplinary authority beyond typical school disruptions risk higher rates of school exclusion.

The relationship between education and juvenile justice is complex, and for those students whose behavior may place them at-risk for involvement with both systems, the dividing lines are often unclear. When should law enforcement be called upon to be involved in school safety matters, and at what level? What if anything is the school's responsibility for behaviors that are violations of criminal codes? Certainly, collaboration between the two systems is valuable and probably necessary in many locales. A number of the model programs conducted by Indiana's Youth Service Bureaus ("Discipline is Teaching" *Briefing Paper 3*) were in fact collaborative efforts between schools and probation officers, corrections, or judges. Yet these and other data indicate that there is room for caution in expanding the role of juvenile justice with respect to school behavior, or the role of schools with respect to criminal violation. These results may suggest that, while potentially valuable, joint education-juvenile justice programs should be monitored to ensure that they do not contribute to the criminalization of school misbehavior, especially for students of color.

## **Endnotes**

<sup>1</sup> We gratefully acknowledge the assistance of Molly Chamberlin, Director of the Educational Options Division at the Indiana State Department of Education, for her kind assistance in locating state level data and statutes, and Kevin MacDowell, Counsel at the Indiana State Department of Education for assistance in interpretation of state statute.

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Table 1  
*Minimum Length of Expulsion as Defined in State Statute<sup>1</sup>*

State	>3 Days	>10 Days	>15 Days	>20 Days	Remainder of Semester	No Minimum	Do Not Use Expulsion
Alabama						X	
Alaska						X	
Arizona						X	
Arkansas		X					
California					X		
Colorado		X					
Connecticut		X					
Delaware						X	
Florida		X					
Georgia					X		
Hawaii						X	
Idaho						X	
Illinois		X					
Indiana		X					
Iowa						X	
Kansas						X	
Kentucky						X	
Louisiana		X					
Maine						X	
Maryland		X					
Massachusetts						X	
Michigan						X	
Minnesota			X				
Mississippi						X	
Missouri						X	
Montana						X	
Nebraska				X			

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Nevada		X	
New Hampshire		X	
New Jersey		X	
New Mexico	X		
New York			X
North Carolina		X	
North Dakota		X	
Ohio		X	
Oklahoma		X	
Oregon		X	
Pennsylvania	X		
Rhode Island			X
South Carolina	X		
South Dakota		X	
Tennessee	X <sup>2</sup>		
Texas	X		
Utah		X	
Vermont	X		
Virginia		X	
Washington		X	
West Virginia		X	
Wisconsin		X	
Wyoming		X	

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<sup>1</sup> Length in days beyond which a removal from school is counted as an expulsion. That is, below that length, the removal is considered to be out-of-school suspension while all removals above that length are counted as expulsions.

<sup>2</sup> In Tennessee, expulsion is defined as removal from attendance for more than 10 consecutive days or more than 15 days in a month of school attendance.

Table 2

*Infractions Defined by State Statute as Leading to Expulsion or Out-of-School Suspension*

Category	Definition	# of States Defining as Expulsion	# of States Defining as Out of School Suspension
FIREARMS	Firearms	39	6
WEAPONS	Weapons	30	8
PHYSICAL ASSAULT	Physical assault, initiating/participating in fights	23	21
DRUGS	Drugs or paraphernalia	22	15
DISRUPTION/ MISCONDUCT	Disruption of educational process (behavior affecting morale of pupils), misconduct, disruption, disorderly conduct, misdemeanor, indolence	19	15
PROPERTY	Property damage (school or personal property), stealing	16	17
GROSS/CHRONIC MISCONDUCT	Gross/substantial/ habitual/ persistent misconduct, disruption, disorderly conduct, misdemeanor, indolence	16	13
CRIMINAL	Criminal violations, or action that would be a crime if committed by an adult	14	11
ALCOHOL	Alcohol	12	12
INSUBORDINATION	Insubordination, disobedience, defiance of authority	12	12

Table 2 *Infractions Defined by State Statute as Leading to Expulsion or Out-of-School Suspension* (Continued)

Category	Definition	# of States Defining as Expulsion	# of States Defining as Out of School Suspension
WELFARE	Behaviors that threaten or endanger the welfare of others	12	14
RULES	Violation of school rules and regulations	10	8
GROSS INSUBORDINATION	Gross, substantial, habitual, persistent, continued defiance, disobedience, insubordination, incorrigible	9	10
LANGUAGE	Verbal assault, profane language	9	10
FRATERNITY	Membership, etc in a fraternity, sorority, or secret society	7	6
THREATS	Threatening, harassing, intimidating, or menacing a pupil or staff member	6	8
SEXUAL ASSAULT	Sexual assault or harassment	6	3
TERRORISTIC THREATS	Terroristic threats against school, retaliation against school, false threats	5	5
TRUANCY	Truancy/tardiness	3	4
VULGAR	Committing obscene, vulgar, and/or profane acts	2	3

Table 3

*Alternatives to Expulsion and Suspension Permitted or Mandated by State Statute*

Category	% of States Permitting/ Mandating: Expulsion	% of States Permitting/ Mandating: Suspension
Alternative education program/ alternative school	56	32
None	34	54
Rehabilitation program	12	12
Substitute instruction through electronic media, modified curriculum, or modified	10	6
Home-based schooling	8	6
Vocational (adult) educational programs	4	0
Alternative class/ isolated class placement	2	2
Parent/guardian may attend class with pupil	2	4
Tutoring services	2	2
Family preservation services	2	2
Evening class (night school)	2	2
Attend Saturday, summer, intermission school	2	2
Peer mediation and violence prevention programs	0	2
Community service	0	2
In-school suspension	0	18

Table 4

*Due Process Rights Included in State Statute for Suspension and Expulsion*

<b>Due Process Right</b>	<b>States Including: Expulsion</b>		<b>States Including: Suspension</b>	
	<b># of States</b>	<b>% of States</b>	<b># of States</b>	<b>% of States</b>
Meeting, hearing, or review conducted	29	58%	32	64%
Parent has right to attend meeting	20	40%	11	22%
Written notice to parents	18	36%	13	26%
Right to an appeal	16	32%	9	18%
Pupil has the right to attend meeting	14	28%	11	22%
Written notice must contain meeting procedure information	13	26%	4	8%
Right to be represented by counsel	11	22%	7	14%
Written notice must contain reason or facts for expulsion/suspension	10	20%	10	20%
Right to cross-examine witnesses	8	16%	6	12%
Right to produce witnesses	7	14%	6	12%
Pupil/parent/lawyer has right to produce evidence	4	8%	1	2%
Notification includes action taken against student/statement of charges	4	8%	10	20%
Pupil/parent/lawyer has right to inspect all documents used in hearing	4	8%	1	2%
Notify parents (method not included)	2	4%	6	12%
Pupil has the right to testify	2	4%	2	4%
Notice of action being taken/statement of charges must be addressed at meeting	2	4%	0	0%

Written notice contains right of students/parents to due process	2	4%	1	2%
Summary of evidence or reasons for disciplinary action against student must be addressed at meeting	1	2%	5	10%
Pupil does not have to testify	1	2%	0	0%
Pupil is entitled to one postponement of the hearing	1	2%	0	0%
Pupil/parent/lawyer has right to challenge evidence against pupil at meeting	1	2%	0	0%
Parent or pupil (if over 18) can petition for reinstatement	1	2%	0	0%
Pupil is given oral/written notice of charges against him or her	1	2%	13	26%
Right to hear or read a full report of testimony of witnesses against the pupil	1	1%	1	2%
Right for a trial de novo by circuit court	1	2%	1	2%
Written notice should contain principal contact information	1	2%	1	2%
Pupil may be represented by any person of his/her choice	1	2%	0	0%
District must refer student to appropriate county department of social services	1	2%	0	0%
Written notice must describe alternative education services afforded to the pupil in an attempt to avoid expulsion proceedings	1	2%	0	0%
Pupil is given oral/written notice of evidence of charges	1	2%	7	14%
Pupil and parent have right to know ID of witnesses prior to hearing	1	2%	1	2%

May waive formal hearing & negotiate a mutually acceptable penalty with designated disciplinarian	1	2%	1	2%
If expelled for more than 20 days, must provide child/parent with information about services/programs offered that work toward improving aspects of pupil's attitude & behavior that contributed to incident	1	2%	0	0%
Notice must provide information about availability of community-based educational training & intervention programs	1	2%	0	0%
Statement of charges must be addressed at meeting	0	0%	2	4%
Opportunity for student to explain student's conduct, facts, or version of story	0	0%	15	30%
Effort should be made to contact parent by phone or in person	0	0%	4	8%
Parents should be sent a copy of report	0	0%	1	2%
Notification (method not included) includes reason for suspension	0	0%	5	10%
Notification (method not included) includes action taken against student/statement of charges	0	0%	7	14%



Table 5

*Infractions Receiving a Mandatory 1 Year Expulsion in State Statutes Governing School Discipline<sup>a</sup>*

Infraction	# of States using 1-year Mandatory Expulsion for Infraction	% of States using 1-year Mandatory Expulsion for Infraction
Possession of a firearm	40	80%
None	9	18%
Possession of a deadly weapon other than a firearm	16	32%
Possession or sale of a controlled substance	5	10%
Assaulting school employee(s)	1	2%
Making a threat against the school (e.g. bomb threat)	1	2%
Endangering the welfare of students or faculty	1	2%
Endangering school property	1	2%
Conviction or adjudicated delinquent for possession of a firearm or a crime while armed with a firearm	1	2%

<sup>a</sup> Note that numbers will sum to more than 50 states and percentages to greater than 100%, since some states listed multiple offenses for which a student could be expelled for one year.